

12/19/2022

IN THE COURT OF COMMON PLEAS OF BELMONT COUNTY OHIO

DANIEL ELLER and
JAMIE ELLER, his wife,
62035 ROLLING HILLS LANE,
SHADYSIDE, OH 43947

2022 DEC 15 PM 2:47

22 CV 350

CYNTHIA L. FREGIATO
CLERK OF COURT

Frank A. Fregiato

COMMON PLEAS COURT
BELMONT CO. OH
2022 DEC 15 PM 2:47
CYNTHIA L. FREGIATO
CLERK OF COURT

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
1 State Farm Plaza
Bloomington, IL 61710,

**COMPLAINT WITH JURY DEMAND
ATTACHED**

Defendant.

NOW COMES the Plaintiffs, Daniel Eller and Jamie Eller, his wife, who for their Complaint against the Defendant, State Farm Mutual Automobile Insurance Company, state as follows:

1. The Plaintiffs, Daniel Eller and Jamie Eller, are husband and wife, and were at all times material and relevant herein, residents of Shadyside, Belmont County, Ohio.

2. The Defendant, State Farm Mutual Automobile Insurance Company (hereinafter "State Farm"), is and was, at all times material and relevant herein, a corporation organized and existing under the laws of the State of Illinois, and is licensed to issue, and does issue, automobile insurance policies and/or automobile insurance contracts in the State of Ohio.

3. On or about December 1, 2021, at the intersection of Marion Street Bridge and the Interstate Route 70 east bound off ramp, in Belmont County, Ohio,

Exhibit A



1358 National Road
Wheeling, WV 26003
t 304-242-8410
f 304-242-3936

106 East Main Street
St. Clairsville, OH 43950
t 740-695-8141
f 740-695-6999

526 7th Street
Moundsville, WV 26041
t 304-845-5600
f 304-845-5604

One Gateway Center
420 Ft. Duquesne Blvd.
Suite 1800
Pittsburgh, PA 15222
t 412-502-5000
f 412-709-6343

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Yuvia Davila Garcia failed to yield the right-of-way at a stop sign and negligently caused her vehicle to strike the Plaintiff's, Daniel Eller, vehicle.

4. The actions of Yuvia Davila Garcia toward the Plaintiff, Daniel Eller, were negligent in one or more of the following particulars:

- a. Failing to maintain control of his vehicle;
- b. Failing to maintain a proper lookout;
- c. Failing to obey a traffic control device;
- d. Failing to yield the right of way; and
- e. Failing to use due care generally in the operation of his vehicle.

5. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, suffered injuries to his hip, back, neck, arm, head and various other parts of his body, some of which are reasonably certain to be permanent in nature.

6. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, suffered physical pain, mental and emotional anguish, annoyance, inconvenience, and a diminishment in his ability to fully function, enjoy life and earn a living.

7. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, has incurred medical bills.

8. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, has lost wages.



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9. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, is reasonably certain to incur future physical pain, mental and emotional anguish, annoyance, inconvenience, and a diminishment in his ability to fully function, enjoy life, and earn a living.

10. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, is reasonably certain to incur future medical bills.

11. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Daniel Eller, is reasonably certain to incur future lost wages.

12. As a direct and proximate result of the December 1, 2021 collision, Plaintiff, Jamie Eller, has suffered and is reasonably certain to continue to suffer a loss of the love, society, comfort, companionship and services of her husband, Daniel Eller.

13. Defendant, State Farm, issued to Plaintiff, Daniel Eller, an automobile insurance policy, being policy number 369 9280-A23-35B, with a policy period of coverage including December 1, 2021. The insurance policy is not attached to this Complaint inasmuch as it is already in the possession of Defendant, State Farm.

14. All premiums due and owing on the State Farm insurance policy referred to in paragraph 13 above were paid in a timely fashion and said policy was in full force and effect on December 1, 2021.

15. The State Farm insurance policy referred to in paragraph 13 above includes uninsured motorists bodily injury coverage benefits in the amount of One Hundred Thousand Dollars (\$100,000.00) per person and Three Hundred Thousand Dollars (\$300,000.00) per accident.



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16. At the time of the December 1, 2021 collision, Yuvia Davila Garcia was an uninsured motorist operating an uninsured motor vehicle as those terms are defined by Ohio law and by the provisions of the insurance policy issued by Defendant, State Farm, to Plaintiff, Daniel Eller, referenced in paragraph 13 above.

17. Plaintiffs, Daniel Eller and Jamie Eller, timely presented claims for all benefits available to them pursuant to the State Farm insurance policy referred to in paragraph 13 above to compensate them for the injuries and damages they experienced as a result of the collision on December 1, 2021, including uninsured motorists bodily injury coverage benefits.

18. Plaintiffs, Daniel Eller and Jamie Eller, are entitled to uninsured motorist bodily injury coverage benefits available to them pursuant to the terms of the policy of insurance referred to in paragraph 13 above inasmuch as they are legally entitled to recover compensatory damages from an uninsured motorist.

19. Defendant, State Farm, has in its possession sufficient information to recognize that the Plaintiffs, Daniel Eller and Jamie Eller, are entitled to recover uninsured motorist bodily injury coverage benefits under the policy referred to in paragraph 13 above.

20. Defendant, State Farm, has refused to tender uninsured motorist bodily injury coverage benefits that are due and owing to the Plaintiffs, Daniel Eller and Jamie Eller.

21. Defendant's, State Farm, refusal to pay the uninsured motorist bodily injury coverage benefits due and owing to Plaintiffs, Daniel Eller and Jamie Eller, under



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the Staté Farm insurance policy referred to in paragraph 13 above constitutes a breach of contract.

22. The Defendant, State Farm, has arbitrarily, capriciously and/or maliciously refused to pay the policy benefits that are due and owing under circumstances that do not furnish a reasonable justification therefor.

23. Implied in the policy of insurance issued by Defendant, State Farm, to the Plaintiffs, Daniel Eller and Jamie Eller, was a covenant which required Defendant, State Farm, to act fairly and in good faith with respect to its handling of the Plaintiffs', Daniel Eller and Jamie Eller, claim.

24. By refusing to pay uninsured motorist bodily injury coverage benefits due and owing to the Plaintiffs, Daniel Eller and Jamie Eller, Defendant, State Farm, has placed its interests above and ahead of the interest of its insureds.

25. Defendant, State Farm, breached the implied covenant of good faith and fair dealing in connection with its handling of Plaintiffs', Daniel Eller and Jamie Eller, claim for uninsured motorist bodily injury coverage benefits.

26. Defendant's, State Farm, conduct in connection with the handling of the claim of Plaintiffs, Daniel Eller and Jamie Eller, was intentional and was done with a state of mind characterized by ill-will and a spirit of revenge and/or with a conscious disregard for Plaintiffs', Daniel Eller and Jamie Eller, rights.

27. As a result of Defendant's, State Farm, conduct, as referenced herein, the Plaintiffs, Daniel Eller and Jamie Eller, were forced to incur attorney fees, costs and expense, and were forced to suffer substantial inconvenience, aggravation,



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AND
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embarrassment, humiliation, annoyance, anxiety and emotional anguish and mental distress.

28. As a result of Defendant's, State Farm, conduct, as referenced herein, the Plaintiffs, Daniel Eller and Jamie Eller, are entitled to recover punitive damages in an amount sufficient to punish Defendant, State Farm, for its wrongful conduct and to deter it, and other insurance companies, from engaging in similar conduct in the future.

WHEREFORE, the Plaintiffs, Daniel Eller and Jamie Eller, his wife, demand judgment against the Defendant, State Farm Mutual Automobile Insurance Company, for all amounts due under State Farm Policy No. 369 9280-A23-35B; compensatory damages in an amount in excess of \$25,000, punitive damages in excess of \$25,000; for prejudgment and post-judgment interest, attorneys' fees and costs incurred in pursuit of this action, for other specific or general relief as may become apparent as this matter progresses, and for such other relief as this Court deems proper.

A TRIAL BY JURY IS DEMANDED ON ALL ISSUES.

DANIEL ELLER and JAMIE ELLER, his wife, PLAINTIFFS

JAMES G. BORDAS III (#0074071)

JUSTIN J. SELEP (#0099847)

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Counsel for Plaintiffs

State of Ohio
Belmont County
Cynthia L. Fregiato, Clerk of Courts, do hereby certify that the above is a true and correct copy of the original on file in this office.

Cynthia L. Fregiato, Clerk of Courts

By *Kim Shibe* Deputy



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